

AMENDED IN ASSEMBLY MARCH 25, 2014

AMENDED IN ASSEMBLY MARCH 10, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1554

Introduced by Assembly Member Skinner
(Principal coauthor: Assembly Member Rodriguez)
(Coauthors: Assembly Members Atkins and Eggman)
(Coauthors: Senators Block and Corbett)

January 27, 2014

An act to amend Sections 1569.35 and 1569.37 of, and to add Section 1569.25 to, the Health and Safety Code, relating to care facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 1554, as amended, Skinner. Residential care facilities for the elderly.

Existing law, the California Residential Care Facilities for the Elderly Act, provides for the licensure of residential care facilities for the elderly by the State Department of Social Services *and makes a violation of those provisions a crime*. Existing law authorizes a person to request an inspection of a facility by transmitting notice of an alleged violation of law to the department. Existing law requires the department to review a complaint and conduct an onsite inspection within 10 days and requires the department to provide the substance of the complaint to the licensee no earlier than the time of the inspection.

This bill would make various changes to this complaint procedure, including prohibiting the department from ~~disclosing the substance of the complaint to the licensee until the investigation is completed~~ *giving a licensee advance notice of an investigation regarding a complaint*

and requiring the department to make an onsite inspection within 24 hours of receiving a complaint where the complaint alleges abuse, neglect, or a threat of imminent danger. The bill would require the department to *conduct investigations in the manner required to ensure maximum effectiveness while respecting the rights of residents and to complete its an investigation* within 90 days of receiving a complaint, or within 30 days where the complaint alleges abuse, neglect, or a threat of imminent danger. *The bill would prohibit a licensee, or officer or employee of the licensee, from interfering with or obstructing an investigation or onsite inspection conducted pursuant to these provisions and would require the department to assess an immediate civil penalty of \$1,000 per day per violation for violations of that prohibition. Because a violation of this prohibition would also be a crime, the bill would impose a state-mandated local program.* The bill would authorize a complainant who is dissatisfied with the department's investigation, findings, or enforcement to file an appeal, as specified, and would require the department to inform the complainant of these appeal rights, as specified.

The bill would also specify that the names of any persons contained in the records of the department in connection with the California Residential Care Facilities for the Elderly Act are exempt from public disclosure, except for the names of the officers, employees, or agents of the department conducting an investigation or inspection in response to a complaint filed under the act.

Existing law prohibits a licensee from discriminating or retaliating in any manner against a person receiving the services of the licensee's residential care facility for the elderly, or against an employee of the licensee's facility, on the basis, or for the reason that, the person or employee or any other person has initiated or participated in the filing of a complaint, grievance, or a request for inspection with the department, or has initiated or participated in the filing of a complaint, grievance, or request for investigation with the appropriate local ombudsman, or with the state ombudsman.

This bill would require the department to ensure that a licensee complies with that provision.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1569.25 is added to the Health and Safety
2 Code, to read:

3 1569.25. The names of any persons contained in the records
4 received, owned, used, or retained by the department in connection
5 with the provisions of this chapter, except the names of duly
6 authorized officers, employees, or agents of the department
7 conducting an investigation or inspection in response to a complaint
8 filed pursuant to this chapter, shall be exempt from disclosure
9 under the California Public Records Act (Chapter 3.5 (commencing
10 with Section 6250) of Division 7 of Title 1 of the Government
11 Code) and copies of the records provided for public inspection
12 shall have those names deleted.

13 SEC. 2. Section 1569.35 of the Health and Safety Code is
14 amended to read:

15 1569.35. (a) A person may request an investigation of a
16 residential care facility for the elderly in accordance with this
17 chapter by making a complaint to the department alleging a
18 violation of applicable requirements prescribed by statutes or
19 regulations of this state. A complaint may be made either orally
20 or in writing.

21 (b) (1) Upon receipt of a complaint, the department shall make
22 a preliminary review. Within two working days of receiving the
23 complaint, the department shall notify the complainant of the name
24 of the officer, employee, or agent of the department who will
25 conduct the investigation. Unless the department determines that
26 the complaint is willfully intended to harass a licensee or is without
27 any reasonable basis, it shall make an onsite inspection within 10
28 days after receiving the complaint.

29 (2) Notwithstanding paragraph (1), when a complaint alleges
30 abuse, neglect, or a threat of imminent danger of death or serious
31 harm, the department shall make an onsite inspection within 24
32 hours of the receipt of the complaint.

(3) Notwithstanding paragraph (1), when a complaint alleges denial of a statutory right of access to a residential care facility for the elderly under Section 9722 of the Welfare and Institutions Code, the department shall immediately review the complaint, confer with the Office of the State Long-Term Care Ombudsman, and notify the complainant of the department's proposed course of action.

(4) Prior to conducting an onsite inspection pursuant to this section, the officer, employee, or agent of the department who will conduct the inspection shall contact and interview the complainant and inform the complainant of the department's proposed course of action.

(c) The department shall coordinate its investigation of a residential care facility for the elderly under this section with the investigation of the facility by other agencies, including, but not limited to, the Office of the State Long-Term Care Ombudsman and law enforcement agencies.

(d) *The department shall not give a licensee advance notice of an investigation conducted pursuant to this section. The substance of the complaint shall not be disclosed be provided to the licensee until the completion of the investigation no earlier than at the time of the onsite inspection.* Unless the complainant specifically requests that his or her own name is released, neither the substance of the complaint provided to the licensee, nor any copy of the complaint or any record published, released, or otherwise made available to the licensee shall disclose the name of the complainant or the name of any person mentioned in the complaint, except the name of a duly authorized officer, employee, or agent of the department conducting the investigation or inspection pursuant to this chapter.

(e) *The department shall conduct investigations under this section in the manner required to ensure maximum effectiveness while respecting the rights of residents.*

(f) *A licensee, or officer or employee of the licensee, shall not interfere with or obstruct an investigation or onsite inspection conducted pursuant to this section. The department shall assess an immediate civil penalty of one thousand dollars (\$1,000) per day per violation for violations of this subdivision. In addition to assessing that penalty, the department may take any other*

1 *enforcement actions authorized by this chapter for violations of*
2 *this subdivision.*

3 ~~(e)~~

4 (g) When conducting an onsite inspection pursuant to this
5 section, the department shall interview any residents who are the
6 subject of the complaint. Additionally, the officer, employee, or
7 agent of the department conducting the inspection shall collect
8 and evaluate all available evidence, including, but not limited to,
9 all of the following:

10 (1) Observed conditions.

11 (2) Statements of witnesses.

12 (3) Interviews with administration, staff, other residents, family
13 members, visitors, the long-term care ombudsman, and other
14 individuals or agencies that provide services at the facility or have
15 information about the complaint.

16 (4) Records from the facility and any other relevant sources.

17 ~~(f)~~

18 (h) The department shall complete its investigation within 90
19 days of receiving the complaint. Investigation of a complaint
20 alleging abuse, neglect, or a threat of imminent danger of death or
21 serious harm shall be completed within 30 days of receiving the
22 complaint.

23 ~~(g)~~

24 (i) Within 10 days of completing the investigation of a complaint
25 under this section, the department shall notify the complainant in
26 writing of the department's determination as a result of the
27 investigation and of the complainant's right to appeal the findings.
28 The written notice shall describe the appeal process provided for
29 under subdivision-~~(h)~~ (j) and include a copy of any reports and
30 documents describing violations and enforcement actions resulting
31 from the investigation.

32 ~~(h)~~

33 (j) (1) A complainant who is dissatisfied with the department's
34 investigation, findings, or enforcement actions resulting from the
35 investigation may file an appeal by notifying the program manager
36 of the officer, employee, or agent of the department conducting
37 the inspection in writing within 15 days after receiving the notice
38 described in subdivision-~~(g)~~ (i). The program manager shall
39 schedule a meeting or teleconference with the complainant within
40 30 days of receiving an appeal. The program manager shall

1 carefully review the concerns, information, and evidence presented
2 by the complainant to determine whether the department's findings
3 or actions should be modified or whether further investigation is
4 necessary. Within 10 days after conducting the meeting or
5 teleconference with the complainant, the program manager shall
6 notify the complainant in writing of the department's
7 determinations and actions concerning the appeal and of the appeal
8 rights provided in paragraph (2).

9 (2) If a complainant is dissatisfied with the program manager's
10 determination on an appeal, the complainant may, within 15 days
11 after receipt of this determination, file an appeal in writing with
12 the department's Deputy Director of the Community Care
13 Licensing Division. Within 30 days of receiving an appeal, the
14 deputy director or his or her designee shall interview the
15 complainant, consider any information presented or submitted by
16 the complainant, and review the complaint record to determine
17 whether the department's findings or actions should be modified
18 or whether further investigation is necessary. No later than 10 days
19 after completing this review, the deputy director shall notify the
20 complainant in writing of the department's determinations and
21 actions concerning the appeal.

22 (3) A complainant may be assisted or represented by any person
23 of his or her choice in the appeal process described in this
24 subdivision.

25 SEC. 3. Section 1569.37 of the Health and Safety Code is
26 amended to read:

27 1569.37. (a) No licensee, or officer or employee of the licensee,
28 shall discriminate or retaliate in any manner, including, but not
29 limited to, eviction or threat of eviction, against any person
30 receiving the services of the licensee's residential care facility for
31 the elderly, or against any employee of the licensee's facility, on
32 the basis, or for the reason that, the person or employee or any
33 other person has initiated or participated in the filing of a
34 complaint, grievance, or a request for investigation with the
35 department pursuant to this chapter, or has initiated or participated
36 in the filing of a complaint, grievance, or request for investigation
37 with the appropriate local ombudsman, or with the state
38 ombudsman recognized pursuant to Chapter 11 (commencing with
39 Section 9700) of Division 8.5 of the Welfare and Institutions Code.

1 (b) The department shall ensure that a licensee or officer or
2 employee of the licensee complies with subdivision (a).

3 SEC. 4. The Legislature finds and declares that Section 1 of
4 this act, which adds Section 1569.25 to the Health and Safety Code,
5 imposes a limitation on the public's right of access to the meetings
6 of public bodies or the writings of public officials and agencies
7 within the meaning of Section 3 of Article I of the California
8 Constitution. Pursuant to that constitutional provision, the
9 Legislature makes the following findings to demonstrate the interest
10 protected by this limitation and the need for protecting that interest:

11 In order to protect the identity of individual residents and
12 employees of residential care facilities for the elderly, the
13 limitations on the public's right of access imposed by Section 1
14 of this act are necessary.

15 *SEC. 5. No reimbursement is required by this act pursuant to*
16 *Section 6 of Article XIII B of the California Constitution because*
17 *the only costs that may be incurred by a local agency or school*
18 *district will be incurred because this act creates a new crime or*
19 *infraction, eliminates a crime or infraction, or changes the penalty*
20 *for a crime or infraction, within the meaning of Section 17556 of*
21 *the Government Code, or changes the definition of a crime within*
22 *the meaning of Section 6 of Article XIII B of the California*
23 *Constitution.*